IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5626 of 2007()

CRIMENO.806/07 OF ANGAMALI POLICE STATION

PETITIONER

MUKESH N.S., AGED 21 YEARS,
S/O SUDHAKARAN N.K., NEDUMPARAMBIL HOUSE,
KUTARANHI (VIA), KAKKADOMPOYIL P.O.,
KOZHIKKODE DIST.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

STATE OF KERALA BY THE SUB INSPECTOR OF
POLICE, ANGAMALI POLICE STATION, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5626 of 2007

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Dated this the 26th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 376 I.P.C. The crux of the allegations raised against the petitioner by the defacto complainant, a home nurse, is that she had become friendly with the petitioner and he had conscientious sexual intercourse on many occasions. She now alleges in the complaint dt. 1.9.2007 that she had agreed for such sexual intercourse with the petitioner on several days from 7.7.07 onwards on the promise/willingness of the petitioner to marry her. It is in pursuance of such agreement that the petitioner and the defacto complainant had conscientious intercourse at various places, including hotels in Ernakulam. The defacto complainant had become pregnant. The petitioner had now shown reluctance to marry her. It is in these circumstances that the defacto complainant had filed complaint before the police. Investigation is in progress.

2. The learned counsel for the petitioner submits that the allegations are totally false. The petitioner appears to be a woman

of loose moral. The allegation of promise to marry is not true. There is no element of sexual intercourse other than conscientious intercourse. The counsel submits that even if the entire allegations were accepted, the mere breach of a promise to marry on the part of the petitioner even if true, the same cannot in the facts and circumstances prima facie amount to any offence of rape.

3. The learned Prosecutor does not oppose the application. He submits that appropriate conditions may be imposed. I am satisfied in the facts and circumstances of this case, to which brief reference has already been made, that this is a fit case where anticipatory bail can be granted to the ptitioner, subject to appropriate conditions.

4. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 3.10.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 5 p.m. on 4.10.07 and 5.10.2007. During this period, the Investigating Officer shall be entitled to interrogate the petitioner in custody and take necessary steps in the investigation. Thereafter the petitioner shall appear on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 3.10.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 3.10.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 3.10.2007.

(R. BASANT)
Judge

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